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REMARKS

The pending claims were rejected under 35 USC 103(a). Applicant respectfully traverses the rejection.

As articulated in the Advisory Action, the Examiner has interpreted the claims in a manner to eliminate a given element. Specifically, the Examiner has "construed" the programmer of Snell to be both the claimed programmer and the claimed monitor. The above amendments further specify that the monitor and the programmer are distinct and remote from one another. As this was always a feature of the claims and was simply being selectively ignored by the Examiner, these amendments do not serve to narrow the claims.

Applicant is somewhat amazed by the argument presented in the Advisory Action that Snell "fails to articulate the origin of the request." The Examiner is reminded that a given reference must be considered in its entirety. MPEP 2141.02. ("The network server 102 includes components for receiving commands and data from the network programmers 104. Col. 4, lines 55-57.) Furthermore, the Examiner's "modification" may not change the principle of operation of a reference. MPEP 2143.01. Only by selectively and inappropriately ignoring the fact that Snell teaches a physician interface with the programmer and that the programmer communicates with the server can the Examiner construe into existence a "problem" to be solved via a combination with Brown. As this is explicitly precluded by the rules of practice, the rejection is wholly improper and must be withdrawn.

Of notable concern, the Examiner has mischaracterized statements made by Applicant. Specifically, the Examiner states "applicants secondly assert that Snell lacks the ability to transmit such a request." Applicant must insist that this statement either be corrected or that the Examiner provide a basis in the formal record for such an assertion. As previously stated and repeated below, the programmer of Snell provides a means to communicate with the server.

By way of example, claim 1 relates to an apparatus for programming an implantable medical device (IMD). With that apparatus a clinician uses a

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programmer (A) to create a request to modify the IMD. That request is sent from the programmer (A) to the server (B). A monitor (C) that is remote from the programmer (i.e., the monitor is not the programmer) receives the request from the server (A), and the monitor (C) then transmits that request to the IMD. Thus, the clinician uses A, to communicate with B, B communicates with C and C communicates with the IMD. A and C are not the same element.

Snell lacks the claimed monitor, among other things. Applicant must respectfully assert that the Examiner's dismissal of this fact based on whether "a difference in name" is distinguishing is entirely unsupportable. The Snell system alone does not anticipate the claims, nor render them obvious either alone or combined with the references of record.

In Snell, the clinician interfaces exclusively with the network programmer 104 and the network programmer 104 is the exclusive component that communicates with the IMD 105; thus, it is proximate the patient with the IMD. The network server 102 is only used to provide more computing power to the network programmer 104. Thus, whether software is updated via this arrangement (Col. 5, lines 29-34) or "generates" the programming commands (Col. 5 lines 60 – Col. 6, lines 15) based upon what the clinician enters at the network programmer 104, the result is the same. This is a system where the clinician has a device next to the patient and operates to effect programming changes at that location.

In order for the Examiner to construe Snell to teach the claimed apparatus (forgoing a consideration of Brown, for the moment) the clinician must use the network programmer (A) to create and communicate a request to the network server (B), the network server (B), sends this request back to the very same network programmer (A) which now is considered a different element or monitor (C) and the network programmer (A)/monitor (C) communicates with the IMD. Of course, in Snell there is no monitor (C) and the lack of this element is more than a "naming" issue.

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In Snell, where the network programmer 104 is capable of creating the request, as claimed, then the device is acting as a stand-alone programmer and only relying on the network server for software upgrades, database access, etc. Alternatively, Snell explicitly states that the physician communicate with the network programmer (Col. 5, line 67) and that everything generated by the network server (102) is subject to "physician control" (Col. 6, lines 2-3). Thus, the physician uses the network programmer 104 to control what is sent to the IMD. In order to do so, the commands generated by the server are sent to the physician at the network programmer.

In other words, Snell does not contemplate, teach or allow for remote programming of the device. The physician's presence is explicitly required at the patient's site and at the network programmer's site. The Examiner is conveniently and inappropriately removing the fact that the physician uses the network programmer 104 to generate the request. The reference must be considered as a whole and in its entirety. There is no basis for removing the physician from interfacing with the network programmer or adding another interface at a different site and reclassifying the network programmer from what Snell teaches to the claimed monitor. Furthermore, Snell explicitly teaches away from this by indicating that the physician maintains control and must approve what is passed to the implantable medical device (Col. 6, lines 2-4). This issue was not addressed in the Advisory Action.

Despite this, the Examiner has attempted to combine Snell with Brown. Brown teaches providing software updates to external glucose monitors. The Examiner's rejection asserts that there is no "programmer through which the physician creates the request" taught in Snell. Applicant is somewhat surprised to learn (that the Examiner believes) that Snell fails to provide a means by which the physician can create a request since the entirety of the Snell reference is directed to "a distributed system of network programmers" which by necessity require such input.

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Of course, network programmer 104 is where the physician creates the request. In most embodiments of Snell, the network programmer 104 is a complete standalone programmer and when not relying on the server for processing capability, there is still no "monitor" in the reference. Rather, the network programmer 104 has been renamed as a "monitor" solely for purposes of this rejection. Specifically, the Examiner asserts "Snell teaches the physician sending the request through the server 102 to the monitor 104, but lacks a programmer through which the physician creates the request." This overlooks the fact that the network programmer 104 (now named the monitor) is the physician interface and the information generated by the server *is sent back to this exact same device*. Applicant respectfully asserts that Snell lacks a monitor as claimed and lacks the claimed interrelation between the elements; a programmer is in fact provided and it accessed by the physician. The programmer is either network programmer 104 acting as a stand-alone programmer or network programmer 104 using server 102 for computational purposes. In no case is there a lack of a programming interface as purported by the Examiner.

Next the Examiner explains that Brown teaches a "programmer 62." Of course, this is not a programmer for an implantable medical device as presently claimed or as used in Snell, but merely a personal computer by which a doctor is able to send messages to a patient. In addition, the Examiner relies on Brown to teach "authorization codes."

Thus, the Examiner's rejection proposes to modify Snell by adding the Brown "programmer" because Snell "teaches a system in which a server is capable of receiving a request from a clinician and Brown '563 describes an appropriate system for transmitting such a request." In addition, the "combination would additionally maintain appropriate safety levels." This is purportedly the statutorily required motivation to combine references. Applicant respectfully traverses.

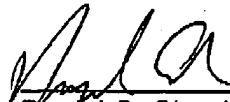
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First, Snell does not lack the ability to transmit such a request; rather such a system is explicitly provided in context. Second, the ability to make a combination is not a motivation to do so. Third, a computer messaging system utilizing a physician's PC does not teach a programmer capable of interfacing with and programming an implantable medical device. Fourth, safety (in the authorization sense) is not at issue as the physician is controlling the network programmer in proximity to the patient as explicitly required by Snell. Any security protocols present exist at the network programmer. Fifth, the Examiner has proposed a modification with the motivation being a means to address a problem *created solely by the modification*. The Examiner is making the combination to craft a rejection based on the absence of a "programmer" in Snell. The Examiner has failed to indicate why such a modification would be motivated; rather, has explained that if made, Browns authentication would be useful to the *modified* system.

The present claims are directed to systems and methods that facilitate remote programming on an implantable medical device. Snell does not teach the claimed elements. Brown is wholly irrelevant, as it does not address programming of implantable medical devices. The combination of these reference is inappropriate and unsupportable and even if made, does not teach the claimed invention. For these and other reasons, the rejections must be withdrawn.

Respectfully submitted,

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